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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,072	02/24/2004	Alan M. Ganz	AG-001US (PAR)	2994

7590

09/25/2006

David Aker
23 Southern Road
Hartsdale, NY 10530

EXAMINER

PUNNOOSE, ROY M

ART UNIT	PAPER NUMBER
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2877

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/787,072

Applicant(s)

GANZ ET AL.

Examiner

Roy M. Punnoose

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 21-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-19 and 21-33 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/5/2006.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 1-19 and 21-33 in the reply filed on July 05, 2006 is acknowledged.

Ex parte Quayle

2. This application is in condition for allowance except for the following formal matters:

See numbered paragraphs 3-5 below.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Reference number 14 is not shown in Figure 1 and reference numbers 4, 12, 42 and 44 are not shown in Figure 4.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Claim 5 (and claim 25) claims "varying distance between a first light conductor **2** for conducting light to said particles and a second light conductor **10** for conducting light from said particles for said evaluations, and evaluating spectra of light received from said particles at a plurality of distances **d 32** between said first light conductor **2** and said second light conductor **10**." Figure 1A shows that the second light conductor **10** is moved with a micropositioner to vary the distance **d**. To make this work, the

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sight glass 6 should have an elongated slot so that the second light conductor 10 can be moved back and forth to vary the distance d as claimed. However, Figure 1 A shows a hole to accommodate the second light conductor 10, similar to the hole through which the first light conductor 2 passes through, and what appears to be index matching fluid 16 around the second light conductor 10. Therefore, Figure 1A does not show that the second light conductor 10 can be moved as claimed. Therefore, the claimed feature must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

5. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Allowable Subject Matter

6. Claims 1-19 and 21-33 are allowable.

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7. Claim 1 is allowable because, prior art of record taken alone or in combination, fails to disclose or render obvious a method for evaluating one or more materials in accordance with size of particles, comprising comparing results of evaluating spectrum of the first group with results of evaluating spectrum of the second group, and providing an indication of a state of said material when said comparing produces a predetermined comparison result, in combination with the rest of the limitations of claim 1.

8. Claims 2-19 are allowable because they are dependent on independent claim 1, or an intermediate claim, and they include all the allowable limitations of the parent claim(s).

9. Claim 21 is allowable because, prior art of record taken alone or in combination, fails to disclose or render obvious an apparatus for evaluating one or more materials in accordance with size of particles, comprising, means for comparing results of evaluating the spectrum of the first group with results of evaluating the spectrum of the second group, and means for providing an indication of a state of said material when said comparing produces a predetermined comparison result, in combination with the rest of the limitations of claim 21.

10. Claims 22-33 are allowable because they are dependent on independent claim 21, or an intermediate claim, and they include all the allowable limitations of the parent claim(s).

Contact/Status Information

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Roy M. Punnoose** whose telephone number is **571-272-2427**.

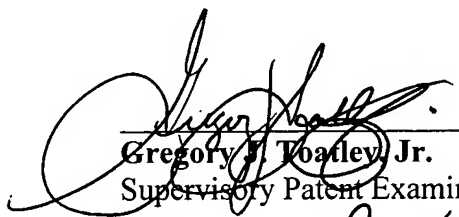
The examiner can normally be reached on 9:00 AM - 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Gregory J. Toatley, Jr.** can be reached on **571-272-2800 ext.77**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Roy M. Punnoose
Patent Examiner
Art Unit 2877
September 08, 2006


Gregory J. Toatley, Jr.
Supervisory Patent Examiner
18 Sept 06